

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 14:</b> Adoption Assistance and Guardianship Assistance	<b>Effective Date:</b> July 1, 2021
	<b>Section 05:</b> Administrative Appeals for Guardianship Assistance Program (GAP)	<b>Version:</b> 5

## POLICY OVERVIEW

A guardian or prospective guardian may request an Administrative Appeal Hearing if the guardian or prospective guardian does not agree with an administrative review decision regarding the Guardianship Assistance Program (GAP).

## PROCEDURE

The Indiana Department of Child Services (DCS) will process requests for an Administrative Appeal Hearing received from a guardian or prospective guardian concerning an administrative review decision made by DCS under policy 14.04 Administrative Review for Guardianship Assistance Program. When a complete and timely request is received by DCS, DCS will forward the request to the OALP and request the appointment of an Administrative Law Judge (ALJ) (also sometimes referred to as Administrative Hearing Officer) to preside over the Administrative Appeal Hearing.

**Note:** A request for an Administrative Appeal Hearing must be based on the same issues, facts, and documentation that were presented in the request for administrative review. Any issues or facts that were not presented in the administrative review request will not be considered at the Administrative Appeal Hearing. In any Administrative Appeal Hearing, the appellant has the burden of proof.

A prospective guardian may utilize the administrative procedures for review and hearing before obtaining an order establishing guardianship of the child. Both the prospective guardian and DCS **must** sign a Guardianship Assistance Agreement before entry of an order establishing guardianship.

A prospective guardian may elect to sign the Guardianship Assistance Agreement for the amount of the periodic payment offered in the DCS Final Offer Letter and reserves the right to pursue the administrative review and hearing process, in accordance with policy 14.04 Administrative Review for Guardianship Assistance Program.

**Note:** In this circumstance, if a prospective guardian with a current Guardianship Assistance Agreement pursues the administrative review and hearing process, any change in the periodic payment that is subsequently approved or ordered in an Administrative Appeal Hearing decision will be retroactive to the date of order finalizing guardianship of the child.

### **Timeline for an Administrative Appeal Hearing**

An Administrative Appeal Hearing requested and granted under this policy will be scheduled and

held within 120 calendar days after receipt of the hearing request by the Office of Administrative Legal Proceedings (OALP), unless the assigned ALJ continues the hearing date by agreement of the parties or upon motion for good cause. The parties will be notified by OALP as to the specific time, date, and location for each hearing. The hearing will be conducted under applicable rules and policies of OALP pertaining to Administrative Appeal Hearings. The ALJ's recommendation shall not be construed to be a decision on the case.

The ALJ will issue a written Administrative Appeal Hearing recommendation within 90 calendar days of completion of the hearing, unless additional time is requested and approved by all parties and the ALJ, as stated in the hearing record. However, a recommendation issued more than 90 calendar days after completion of the hearing will not be void or voidable on the ground of untimeliness. The ALJ recommendation will be mailed to the parties and to the DCS Final Agency Authority (FAA).

### **Appeal of Periodic Payment**

When an Administrative Appeal Hearing concerns the initial periodic payment amount for a fully signed Guardianship Assistance Agreement and the prospective guardian did not pursue the administrative review and hearing process within 15 calendar days of the DCS Final Offer Letter date, the Administrative Appeal Hearing request will be considered a request for a modification of the current Guardianship Assistance Agreement. Modification will proceed in accordance with policy 14.03 Modification and Continuation of a Guardianship Assistance Agreement.

Upon issuance of the written recommendation by the ALJ, the DCS FAA will automatically conduct a Final Agency Review of the recommendation. In conducting the review, the DCS FAA will consider the facts of case and the ALJ recommendation. Upon completion of the Final Agency Review, the DCS FAA will issue a decision upholding, reversing, or remanding the initial DCS decision which underlies the administrative appeal. DCS will then notify the parties of the decision. If the guardian or prospective guardian is dissatisfied with the results of the Final Agency Review, the guardian or prospective guardian may seek judicial review in accordance with IC 4-21.5-5.

If an Administrative Appeal Hearing recommendation involves periodic payment amount and concludes that the guardian met the burden of proof that the amount approved by DCS should be changed, the ALJ will not determine the proper amount of a periodic payment. If the DCS FAA finds in congruence with such an ALJ recommendation, the case will be sent back to DCS for further consideration based on the findings and conclusions stated in the decision. If subsequent negotiations do not result in agreement concerning the periodic payment amount, a second Administrative Appeal Hearing will not be provided to re-argue the same disputed issues. In that event the administrative review determination concerning the post-remand Final Offer Letter will be the final agency action of DCS.

**Note:** Any approved change in the periodic payment shall be documented by an amendment to the agreement that states the effective date for the change. If the appeal concerns the periodic payment amount stated in the Guardianship Assistance Agreement that was signed before entry of the order establishing guardianship, the effective date will be retroactive to the date of the order establishing guardianship.

If the administrative review decision is upheld by the DCS FAA, the amount of the periodic payment, as stated in the signed original Guardianship Assistance Agreement, or currently effective amendment, will remain in effect unless or until the periodic payment is changed in

accordance with the modification procedures in policy 14.03 Modification and Continuation of a Guardianship Assistance Agreement.

The final DCS agency action, after exhaustion of available administrative review and appeal procedures, is subject to judicial review under the applicable provisions of IC 4-21.5-5.

An Administrative Appeal Hearing will not be provided for the following decisions:

1. Approval or disapproval of any requested change in the language or format of the agreement form that DCS submitted for completion and signature; or
2. Any other decision or determination of DCS relating to administration of the GAP under this policy that is not described in this policy.

#### **Initiation of Administrative Appeal for GAP**

To initiate an administrative appeal, DCS will:

1. Send notice of the administrative review decision to the guardian or prospective guardian, along with the Request for Administrative Hearing/Indiana GAP form;
2. Review any Request for Administrative Hearing/Indiana GAP form received; and
3. Forward the completed Request for Administrative Hearing/Indiana GAP form to OALP in a timely manner and request the appointment of an ALJ to preside over the Administrative Appeal Hearing.

#### **During an Administrative Appeal Hearing for GAP**

During an Administrative Appeal Hearing:

1. A DCS Attorney will represent DCS;

**Note:** An Attorney for DCS who was involved in the negotiation and determination of periodic payment amount or modification that is the subject of an Administrative Appeal Hearing will assist the DCS Attorney litigating the case, as requested, in presenting the DCS position at the hearing.

2. The DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS at an Administrative Appeal Hearing concerning the original periodic payment amount or a modification of periodic payment amount based on change of circumstances;
3. DCS CEU will provide technical assistance, including testimony, to support the position of DCS for an Administrative Appeal Hearing concerning eligibility, continuation of guardianship assistance beyond the child's 18<sup>th</sup> birthday, termination of a Guardianship Assistance Agreement, administrative suspension of guardianship assistance payments, or decisions concerning modification requests other than changes in periodic payment amounts; and
4. DCS Legal Operations will provide assistance, including testimony, to support the position of DCS for an Administrative Appeal Hearing concerning the result of an administrative review under policy 14.04 Administrative Review for Guardianship Assistance Program.

#### **DCS Final Agency Review**

The DCS FAA will:

1. Review the ALJ's recommendation, consider the facts of the case, and issue a decision on the case. The DCS FAA shall utilize their experience and training in the relevant subject matter when conducting their final agency review; and

**Note:** The DCS FAA may schedule status conferences or briefing deadlines during the review, however, failure to attend these status conferences or respond to briefing deadlines will not result in a dismissal of the case or a failure of the DCS FAA to issue a decision on the case.

2. Notify the parties and OALP of the decision, including any applicable right to seek judicial review as provided in IC 4-21.5-5.

Following the decision of the FAA to uphold, reverse, or remand the administrative review decision, a DCS attorney will notify DCS staff as to appropriate procedures to comply with the decision.

## LEGAL REFERENCES

- [IC 4-15-10.5: Office of Administrative Law Proceedings](#)
- [IC 4-21.5-5: Judicial Review](#)
- [IC 29-3-8-9\(f\): Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services; conduct of hearing](#)
- [IC 29-3-12-6\(b\): Guardianship extends beyond age 18 if minor is incapacitated or receives certain DCS assistance](#)
- [IC 31-9-2-17.8\(1\)\(E\): Guardianship assistance included in child services](#)
- [45 C.F.R. 1355.30 Referenced Rules for Title IV-E](#)
- [45 C.F.R. 205.10 Title IV-E Fair Hearings](#)
- [465 IAC 3-2 Administrative Reviews and Hearings](#)
- [42 U.S.C. 673\(d\) Kinship Guardianship Assistance Program](#)

## RELEVANT INFORMATION

### Definitions

#### Administrative Hearing Officer

Administrative Hearing Officer refers to an individual who presides over an administrative hearing. An Administrative Hearing Officer is also commonly referred to as an Administrative Law Judge (ALJ).

#### Appellant

For the purposes of administrative appeals for GAP, an appellant is a person aggrieved by the decision made in an administrative review by DCS who is either:

1. A prospective guardian, including the individual who has applied for GAP; or
2. An individual who is a party to a Guardianship Assistance Agreement.

#### Burden of Proof

In any Administrative Appeal Hearing conducted regarding eligibility for GAP, the appellant has the burden to prove the child meets all applicable eligibility requirements for GAP. See policy 14.01 Guardianship Assistance Program (GAP) for additional information regarding these requirements.

#### Final Agency Action

Final agency action means, with respect to an administrative action taken by the department, the issuance of an order by the ultimate authority of the department that:

1. Disposes of all issues for all parties to an administrative proceeding regarding the action after the parties to the administrative proceeding have exhausted all administrative remedies concerning the action; and
2. Is designated as a final order by the ultimate authority of the department.

#### Final Agency Authority (FAA)

For purposes of an administrative proceeding regarding an action taken by DCS, the director or the director's designee is the FAA (referred to in Indiana Code as the ultimate authority) of DCS. A designee of the director must be:

1. A deputy director of DCS; or
2. An individual who:
  - a. Is an attorney in good standing who is admitted to practice law in Indiana; and
  - b. Is an employee of DCS, except as otherwise allowed under state and federal law.

#### **Forms and Tools**

- [Final Guardianship Assistance Program Eligibility Determination](#) - Available via CEU
- [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#) - Available via CEU
- [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#)

#### **Related Policies**

- [14.01 Guardianship Assistance Program \(GAP\)](#)
- [14.03 Modification and Continuation of a Guardianship Assistance Agreement](#)
- [14.04 Administrative Review for Guardianship Assistance Program](#)